

Reg Agenda Entry

CERCLA/EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms

OSWER/OEM/ER Staff
Tier 2 Regulation

SAN: 5484
RIN: 2050-AG66

Status

Status: Division Update Requested
Reports: Spring 2014 - Regulatory Agenda

Plan Status: No

Reviewers

Legal: Erik Swenson (202-564-7252)

Policy: Sarah Rees (202-564-0569)

Internal Abstract

[Instructions: This Internal Abstract is used within EPA but not shared outside of the Agency. It is provided here for comparison purposes. Do not edit this version for the Regulatory Agenda. Edit the External Abstract below.](#)

On December 18, 2008, EPA published a Final Rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms (73 FR 76948) ("the Final Rule"). The Final Rule established exemptions from certain reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right to Know Act (EPCRA). On January 15, 2009, Waterkeeper Alliance, Sierra Club, the Humane Society of the United States, Environmental Integrity Project, the Center for Food Safety, and Citizens for Pennsylvania's Future (collectively, "Waterkeeper") filed a Petition for Review of the Final Rule. The petition challenged the exemptions under both CERCLA and EPCRA. On March 17, 2009, the National Pork Producers Council filed its Petition for Review challenging a portion of the Final Rule that amended the EPCRA regulations. The two cases were consolidated. On February 11, 2009, the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association moved to intervene on behalf of EPA to assert their interests in the Final Rule. The case was held in abeyance so that the Parties could participate in the D.C. Circuit Mediation Program. While the mediation process did not resolve the issues raised by all of the Parties, it did raise issues warranting reconsideration of the final rule by EPA. As such, EPA sought and received a voluntary remand, without vacatur of the Final Rule during the re-evaluation period. In this action, EPA is reconsidering the Final Rule based on (1) policy choices that were initially made in the promulgation of the Final Rule, (2) views that were articulated by the Parties during the mediation process and (3) additional data that is now available.

External Abstract

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On December 18, 2008, EPA published a Final Rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms (73 FR 76948) ("the Final Rule"). The Final Rule established exemptions from certain reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right to Know Act (EPCRA). On January 15, 2009, Waterkeeper Alliance, Sierra Club, the Humane Society of the United States, Environmental Integrity Project, the Center for Food Safety, and Citizens for Pennsylvania's Future (collectively, "Waterkeeper") filed a Petition for Review of the Final Rule. The petition challenged the exemptions under both CERCLA and EPCRA. On March 17, 2009, the National Pork Producers Council filed its Petition for Review challenging a portion of the Final Rule that amended the EPCRA regulations. The two cases were consolidated. On February 11, 2009, the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association moved to intervene on behalf of EPA to assert their interests in the Final Rule. The case was held in abeyance so that the Parties could participate in the D.C. Circuit Mediation Program. While the mediation process did not resolve the issues raised by all of the Parties, it did raise issues warranting reconsideration of the final rule by EPA. As such, EPA sought and received a voluntary remand, without vacatur of the Final Rule during the re-evaluation period. In this action, EPA is reconsidering the Final Rule based on (1) policy choices that were initially made in the promulgation of the Final Rule, (2) views that were articulated by the Parties during the mediation process and (3) additional data that is now available. The additional data includes data that was collected as part of the National Air Emissions Monitoring Study (NAEMS). EPA's Science Advisory Board (SAB) is currently evaluating draft emissions estimating methodologies (EEMs) based on the NAEMS data. Because EPA intends to use final EEMs as part of the proposed rule, the schedule for the publication of the proposed rule is dependent on a timely finalization of those EEMs.

Regulatory Information**Priority Category:****Current Answer:** Other Significant**Instructions:** [Select one of the following choices.](#)

<input type="checkbox"/>	Economically Significant
<input type="checkbox"/>	Other Significant
<input type="checkbox"/>	Substantive Nonsignificant
<input type="checkbox"/>	Routine and Frequent
<input type="checkbox"/>	Info/Admin/Other

Stage of Rulemaking:**Current Answer:** Pending**Instructions:** [Select one of the following choices.](#)

<input type="checkbox"/>	Prerule
<input type="checkbox"/>	Proposed Rule
<input type="checkbox"/>	Final Rule Stage
<input type="checkbox"/>	Long-Term Action
<input type="checkbox"/>	Pending
<input type="checkbox"/>	Completed Rule

CFR Citation: 40 CFR 302
40 CFR 355**Legal Authority:** 42 USC 9603
42 USC 11004**Deadlines:****Deadline Description:**

Potential Effects

Human Health

Question: Will this action address/concern human health impacts?

Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.

Current Answer: No

Children's Health

Question: Is this action likely to address an adverse impact on childhood lifestages including prenatal (via exposure to women of childbearing age)? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If Yes, indicate if the likely impact is related to Exposure and/or Toxicity, and provide an explanation.

Current Answer: No

Environmental Justice

Question 1: Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority, low-income or indigenous populations, or tribes? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If yes, select from options below and provide an explanation.

Selecting No means that this action is not likely to be of particular interest to these populations or tribes. Selecting Undetermined means that, given the information available at this time, the Agency does not know if these populations or tribes will be particularly interested in this action.

Current Answer: Yes

Question 2: If you answered Yes to the previous question, place an "X" to the left of at least one:

<input type="checkbox"/>	The action is likely to impact the health of these populations.
<input type="checkbox"/>	The action is likely to impact the environmental conditions of these populations.
<input type="checkbox"/>	The action is likely to present an opportunity to address an existing disproportionate impact on these populations.
<input type="checkbox"/>	The action is likely to result in the collection of information or data that could be used to assess potential impacts on the health or environmental conditions of these populations or tribes.
<input type="checkbox"/>	The action is likely to affect the availability of information to these populations or tribes.
<input type="checkbox"/>	Other reasons. Explain.

Current Answer:

Availability

Comments: .

Levels of Government Affected:

Question 1: Are any levels of government affected? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined to indicate whether the action is expected to affect a specific level of government. If Yes, answer the next question.]

Current Answer: Yes

Question 2: Levels Affected

Instructions: Place an "X" to the left of at least one level of government if you answered Yes to Question 1.]

<input type="checkbox"/>	Federal
<input type="checkbox"/>	State
<input type="checkbox"/>	Local
<input type="checkbox"/>	Tribal
<input type="checkbox"/>	Small

Current Answer:

Federal

State

Local

Question 3: Describe the type of effects.

Instructions: Place an "X" in at least one of the columns for each affected government level.]

<input type="checkbox"/>	Likely to be involved in implementation	<input type="checkbox"/>	Likely to be regulated
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Federal		
State		
Local		
Tribal		
Small		

Current answer:

	Likely to be involved in implementation	Likely to be regulated
Federal	Yes	No
State	Yes	No
Local	Yes	No
Tribal		
Small		

Congressional Review Act (under SBREFA):

Question: Is this action major under CRA?

[Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.]

Current answer: No

Unfunded Mandates:

Question 1: Is this action subject to Section 202 of the Unfunded Mandates Reform Act (UMRA)?

[Instructions: Answer Yes, No or Undetermined. If Yes, answer the next question.]

Current answer: Undetermined

Question 2: If your action is subject to Section 202 of UMRA, please check which category or categories are affected.

[Instructions: Place an "X" to the left of at least one.]

	Government
	Private

Current answer:

Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act:

Question 1: Is this Action likely to have any impact (positive or negative) on any small entities?

[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

	No Small Entities Affected
	Undetermined
	Small Business
	Small Government Jurisdictions
	Small Non-Profit Organizations

Current answer:

Undetermined

Question 2: Is this Action likely to have any adverse economic impact on any small entities?

[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

	No Small Entities Affected
	Undetermined
	Small Business
	Small Government Jurisdictions
	Small Non-Profit Organizations

Current answer:

Undetermined

Question 3: Is this Action likely to have a significant adverse economic impact on a substantial number small of small entities (SISNOSE) as defined in the Regulatory Flexibility Act?

[Instructions: Place an "X" to the left of at least one.]

<input type="checkbox"/>	No Small Entities Affected
<input type="checkbox"/>	Undetermined
<input type="checkbox"/>	Small Business
<input type="checkbox"/>	Small Government Jurisdictions
<input type="checkbox"/>	Small Non-Profit Organizations

Current answer:

Undetermined

Federalism E.O. 13132:

Question: Is this action likely to have federalism implications as defined in E.O. 13132?

[Instructions: Answer Yes, No or Undetermined.]

Current answer: No

Energy Impacts:

Question: Is the action likely to have any significant effect on the supply, distribution or use of energy as defined in Executive Order 13211?

[Instructions: Answer Yes, No or Undetermined.]

Current answer: No

International Impacts:

Question: Will this regulatory action be likely to have international trade and investment effects, or otherwise be of international interest to our trading partners?

[Instructions: Answer Yes, No or Undetermined.]

Current answer: No

Timetable:

12/01/2014 - NPRM:

Sorting and Reference Information

Subject Code: 60 - CERCLA

[Instructions: Select one from 10 – Clean Air Act; 20 – Atomic Energy Act; 25 – Noise Control Act; 3 – General; 30 – FIFRA; 35 – TSCA; 40 – EPCRA; 45 – Chemical Safety Information Relief Act; 50 – RCRA; 55 – Oil Pollution Act; 60 – CERCLA; 70 – Clean Water Act; 72 – SDWA; 76 – MPRSA; 78 – SPA]

Programmatic URL:

[Instructions: Optional. Paste a URL to an EPA.gov web page that describes your action.]

Public Comment URL:

[Instructions: Optional. Paste a URL to a Regulations.gov web page that offers an opportunity for public comment.]

Docket #: EPA-HQ-SFUND-2007-0469

[Instructions: Where available, provide the Regulations.gov docket number assigned to your action.]

Additional Information:

Affected Industrial Sectors

Instructions: Choose NAICS codes from the [2012 U.S. NAICS Codes and Titles](http://www.census.gov/eos/www/naics/) (<http://www.census.gov/eos/www/naics/>).

Agency POCs

Primary POC:

Lynn Beasley/DC/USEPA/US
Environmental Protection Agency
Office of Solid Waste and Emergency Response
5104A
Washington, DC 20460
Phone: 202 564-1965
FAX: 202 564-~~2625~~8211
E-Mail: Beasley.Lynn@epa.gov

Public POC:

Phone:

E-Mail:

Note: Deliberative...Not Agency Policy...Do Not Quote, Cite or Distribute